

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 249 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANANDKUMAR JAMNADAS ACHARYA

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioner

MR AJ DESAI, APP for Respondent No. 1, 2 & 4

MR SHUKLA for Respondent No.3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 20/04/98

ORAL JUDGMENT

Rule. Learned APP, Shri A.J.Desai, appearing on behalf of respondents No.1, 2 and 4 waives service of Rule. Learned advocate Shri Shukla has appeared on behalf of respondent No.3 in response to the notice issued under earlier order and has waived the service of Rule.

2. Heard the learned advocate Shri Saurin Shah.
Leave granted to produce certain documents on record.
The documents produced by him be taken on record.

3. The petitioner has, by this Special Criminal Application, challenged the action of respondent No.3 in respect to registering an offence vide C.R. No.I-10/98 at Dariapur Police Station and the action of respondent No.4 who has registered an offence under C.R.No.I-444/97 at Gandhinagar Town Sector Police Station, interalia contending that both the offence are registered against the present petitioner in respect to same offences made punishable under Section 420 and 409 of the Indian Penal Code.

4. Shri Saurin Shah, learned advocate appearing on behalf of the petitioner has relied on observations made by the Hon'ble Supreme Court in the matter of State of Bombay v/s. S.L.Apte & Anr. reported vide AIR 1961 SC 578, and has urged that in the instant case, the allegations made in the first complaint filed by respondent No.3 are in respect to criminal act of cheating and misappropriation alleged to have been committed by the present petitioner in as much as that the petitioner has claimed and received subsistence allowance during the suspension period for aggregate amount of Rs.3,914=50, in between April 1985 to November 1985. He further contended that the allegations made in the complaint recorded by respondent No.4 at the instance of Gujarat State Text Book Board, Gandhinagar, are also identical and similar for having committed an offence made punishable under Section 420 and 409 of the Indian Penal Code in as much as that the petitioner has misrepresented before the said Board by stating his name as Anandkumar Jamnadas Acharya instead of his real name Bharatkumar Jamnadas Sadhu and having suppressed the fact that he was already in service of Ahmedabad Municipal Corporation in the Octroi Department and was suspended during the relevant period, and that he obtained the appointment for service and had received salary for the period during 22.7.85 to 29.3.93. Shri Saurin Shah has further urged that the said act and action of respondents No.3 and 4 prosecuting the petitioner by two different complaints, as stated hereinabove, in respect to the same set of facts amounts to violation of Article 22 of the Constitution of India and as such, this Court should intervene and quash the proceedings by issuing appropriate writ or direction.

4. The tenacious submissions advanced by learned advocate Shri Saurin Shah could hardly be accepted on the

face of the record that the respondent No.3, as an Octroi Superintendent in Ahmedabad Municipal Corporation, has filed criminal complaint in respect to the alleged act of cheating and misappropriation committed by the present petitioner by suppressing the fact that he has taken the appointment with Gujarat State Text Book Board and was gainfully engaged. With such suppression, he has obtained subsistence allowance from Ahmedabad Municipal Corporation as permissible under the rules and regulations framed by the Corporation as the petitioner was suspended from his service. The respondent No.4, being a Police Officer, has taken cognizance of information given by Gujarat State Text Book Board in respect to criminal act of cheating and misappropriation committed by the present petitioner with the Board by suppressing the fact to the effect that the petitioner was already in service of Ahmedabad Municipal Corporation under Octroi Department and was under suspension. By suppressing this fact he has obtained a fresh appointment and during the course of service he has received the salary for which he was not entitled to.

5. Thus, the offence under investigation of respondent No.4 and the offence for which criminal complaint is filed by respondent No.3 are arising from two different set of facts which are identical and similar in nature, but the same cannot be said to be a same fact constituting only one offence. In view of the same, the submission in respect to Article 22 of the Constitution has no merits and the observations made by the Hon'ble Supreme Court in the above stated authority have no application to the present case.

6. On the basis of above discussion, I hold that the petition is wholly misconceived and cannot be accepted on the facts and circumstances stated in the petition and urged at Bar. In view of the same, the petition stands disposed of as rejected. Rule discharged. No order as to costs.

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(sunil)